

Richard D. McCune, Esq. State Bar No. 132124  
rdm@mwtriallawyers.com  
Jae (Eddie) K. Kim, Esq., State Bar No. 236805  
jkk@mwtriallawyers.com  
MCCUNE & WRIGHT, LLP  
2068 Orange Tree Lane, Suite 216  
Redlands, California 92374  
Telephone: (909) 557-1250  
Facsimile: (909) 557-1275

**PUBLIC VERSION**

Mitchell M. Breit, Esq. (Admitted *Pro Hac Vice*)  
mbreit@wdklaw.com  
WHATLEY DRAKE & KALLAS, LLC  
1540 Broadway, 37th Floor  
New York, NY 10036  
Telephone: (212) 447-7070  
Facsimile: (212) 447-7077

Attorneys for Plaintiffs,  
VERONICA GUTIERREZ, ERIN WALKER and WILLIAM SMITH,  
on behalf of themselves and all others similarly situated

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VERONICA GUTIERREZ, ERIN WALKER )  
and WILLIAM SMITH, as individuals, and on )  
behalf of all others similarly situated, )

Case No.: C 07-05923 WHA (JCSx)

**CLASS ACTION**

Plaintiffs,

***PUBLIC VERSION:***  
**DECLARATION OF RICHARD D. McCUNE IN**  
**SUPPORT OF PLAINTIFFS' REPLY TO**  
**OPPOSITION OF WELLS FARGO BANK, N.A.**  
**TO PLAINTIFFS' MOTION FOR CLASS**  
**CERTIFICATION; EXHIBITS**

v.

WELLS FARGO & COMPANY; WELLS  
FARGO BANK, N.A.; and DOES 1 through  
125,

Defendants.

**DATE: August 21, 2008**  
**TIME: 8:00 a.m.**  
**DEPT: Courtroom 9, 19th Floor**

Judge Assigned: Hon. William H. Alsup  
Complaint Filed: November 21, 2007

I, RICHARD D. McCUNE, declare:

1. I am an attorney licensed to practice law before all of the courts of the State of California and
- I am a partner of McCune & Wright, LLP, counsel of record for Plaintiffs. The following

1 facts are within my personal knowledge or based on records and files at my law firm, and, if  
2 called upon as a witness, I could and would testify competently thereto.

3 2. Plaintiffs cite a number of documents produced by Wells Fargo and deposition transcripts of  
4 Wells Fargo's employees which Wells Fargo has designated as being "Confidential,"  
5 "Highly Confidential," or "Confidential – Attorneys' Eyes Only," or the like. These  
6 documents are manually submitted under seal for filing, or if only portions of the documents  
7 have some form of confidential designation, then redacted versions of those documents are  
8 filed in the public version of the exhibits and the unredacted versions are manually filed  
9 under seal. Likewise, the information set forth from these documents in Plaintiffs' Reply to  
10 Opposition of Wells Fargo Bank, N.A. to Plaintiffs' Motion for Class Certification is being  
11 redacted from the public version of the pleading.

12 3. Attached hereto **Exhibit 19** is a true and correct recorded copy of a Wells Fargo Television  
13 Advertisement. **[MANUAL FILING – Non/Graphic/Text Computer File (audio, video)**  
14 **on DVD]**

15 4. Attached hereto as **Exhibit 20** are true and correct copies of selected Print Advertisements  
16 produced by Wells Fargo in discovery.

17 5. Attached hereto as **Exhibit 21** are true and correct copies of selected Radio Commercials for  
18 produced by Wells Fargo in discovery.

19 6. Attached hereto as **Exhibit 22** are true and correct copies of selected Wells Fargo Statement  
20 Advertisements produced by Wells Fargo in discovery.

21 7. Attached hereto as **Exhibit 23** are true and correct copies of selected ATM Advertisements  
22 produced by Wells Fargo in discovery.

23 8. Attached hereto as **Exhibit 24**, are excerpts of the Deposition of Mark Lentz, taken on April  
24 25, 2008, at pp. 7:15-19, 13:17-14:6, 52:25-53:6, 55:10-14 and 71:18-72:5.


25 **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

26 9. Attached hereto as **Exhibit 25** is a true and correct copy of the April 25, 2008 Deposition  
27 Notice.  
28

10. Attached hereto as **Exhibit 26** are true and correct copies of Plaintiffs' Notice of Taking Depositions for depositions taken on June 24, June 25, July 2, and July 9, 2008.
11. Attached hereto as **Exhibit 27** are excerpts of the Deposition of Paul Williamson, taken on July 9, 2008, at pp. 18:19-19:1, 19:16-20:19 and 27:25-28:3. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**
12. Attached hereto as **Exhibit 28** is a true and correct copy of BMGP Data Fields. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**
13. Attached hereto as **Exhibit 29** are excerpts of the Deposition of Karen Moore, taken on June 2, 2008, at pp. 16:25-19:6. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**
14. Attached hereto as **Exhibit 30** is a true and correct copy of the October 11, 2006 Insufficient Funds Notice sent to Veronica Gutierrez.
15. Attached hereto as **Exhibit 31** are excerpts of the Deposition of Erin Walker, taken on June 13, 2008, at pp. 59:25-60:13.
16. Attached hereto as **Exhibit 32** are excerpts of the Deposition of William Smith, taken on June 18, 2008, at pp. 49:22-51:19.
17. I have been contacted by over 50 aggrieved Wells Fargo customers, most of who are willing to serve as class representatives should the Court decide additional class representatives are necessary.

I so declare the above is true and correct under penalty of perjury under the laws of the United States.

Executed on August 7, 2008, at Redlands, California.

  
Richard D. McCune